

PS 42.4

COOPERATIVE ENFORCEMENT AGREEMENT

Between

THE U.S. ENVIRONMENTAL PROTECTION AGENCY

and

THE STATE OF SOUTH DAKOTA

RELATING TO the cooperative enforcement of the laws enacted by the United States of America and the State of South Dakota to protect man and the environment from unreasonable hazards associated with pesticide production and use.

I. Preamble.

The Regional Administrator, EPA Region VIII and the Secretary of Agriculture of the State of South Dakota hereby enter into this Cooperative Enforcement Agreement. This agreement is to clarify each agency's responsibility in the cooperative enforcement of the laws enacted by the United States of America and the State of South Dakota to protect human health and the environment from the improper use and illegal sale of pesticide products. Both agencies agree that cooperative pesticide enforcement is necessary and desirable to assure the efficient allocation of public funds, to minimize duplication of enforcement efforts and to more appropriately respond to pesticide emergencies, accidents, and unusual enforcement needs.

II. Program Elements.

The South Dakota Department of Agriculture (Department) agrees to conduct the following program elements:

A. Inspection Procedures, Sampling Procedures, and Sample Integrity.

All investigations, inspections, and all sampling will be conducted in accordance with South Dakota Codified Law, Chapter 38-20A and Chapter 38-21, utilizing inspection forms consistent with those contained in the EPA Pesticides Inspection Manual. Sample integrity will be maintained during collection, transport, storage, and analysis according to an approved Quality Assurance Plan adopted by the Department and approved by EPA.

B. Cooperative Enforcement Action.

EPA's enforcement role is shifting from a primary focus on performing inspections and taking enforcement actions to an emphasis on conducting reviews and evaluations and providing states with guidance and technical assistance, in order to assure adequate performance of state compliance and enforcement programs.

The Congress of the United States has charged EPA to delegate responsibility for administering most environmental programs to the states as they demonstrate the desire and capability to assume primacy. The Congress, however, continues to hold EPA accountable for ensuring that its laws are carried out according to its intent.

The relationship between EPA and delegated states is intended to be a partnership. Both EPA and the states have continuing roles and responsibilities under delegated programs that are most effectively planned and executed together. States are best placed to address specific problems as they arise on a day-to-day basis, and EPA should strive to strengthen and assist state programs.

EPA also has a role in the enforcement areas as a strong back-up to states to provide direct enforcement actions when needed. Region VIII will endeavor to assist state compliance and enforcement programs when requested, but may also take direct enforcement action in those cases where a state demonstrates it is not willing to establish a strong enforcement presence or is unable to do so due to a lack of necessary resources or requisite legal authority.

It is agreed that when evidence collected reveals a possible violation of the South Dakota Pesticide Statutes and Regulations, only the South Dakota Department of Agriculture will pursue remedies for such violations as provided for in the South Dakota Pesticide Statutes and Regulations. Where such evidence reveals a possible violation of both Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the South Dakota Pesticide Statutes and Regulations, the South Dakota Department of Agriculture shall have primary enforcement responsibility for pesticide use violation enforcement. EPA will refer all pesticide use complaints to the Department for investigation. Pursuant to the Agency's final interpretive rule regarding Section 26 of FIFRA, cases deemed by EPA to be "significant cases" will be so designated and the disposition of such cases will be monitored by EPA. If within thirty days after receipt of a complaint referral from EPA, the State has not initiated an investigation, EPA may conduct its own investigation of the complaint. If, within thirty days after completion of the investigation of a complaint referral, the State has not commenced appropriate enforcement action, EPA may act upon the violation to the extent authorized by FIFRA as amended. At the option of the State, complaints or violations may be referred to EPA Region VIII for action. In any pesticide investigation on Federal or Indian lands where the State is not sure of its jurisdiction, the case will be referred to the affected tribe for concurrence and to EPA, Region VIII for action.

In those cases where there is a lack of agreement over who should take action, which cannot be resolved at the program level, the issue will be referred to the EPA Regional Administrator and the Secretary of Agriculture. In rare cases of clearly unacceptable performance by a state which show lack of good faith or capacity on the part of the state to correct problems, EPA is prepared to take back a delegated program. Taking back delegated responsibilities, however, must occur in a consistent and predictable manner, under pre-defined conditions and circumstances and in accordance with federal law.

Pesticide use enforcement consists of ensuring that the applicator certification requirement is being complied with and that the applicator is following all labeling requirements. Under Section 26 of FIFRA, EPA does not have authority to delegate primary enforcement responsibility for any area of enforcement except pesticide use. The Department has been delegated primacy for pesticide use enforcement. Pesticide use enforcement is made up of two types of inspections: use inspections and follow-up inspections. Follow-up inspections are initiated in response to complaints, damage reports, or referrals when there is reason to believe that a violation has occurred whether or not it is actually proven. A use inspection may be initiated as an observation of an actual pesticide application or as an inspection following an application when there is no reason to believe that a violation is occurring.

Monitoring the use of pesticides under Sections 5, 18, and 24c of FIFRA is included in pesticide use enforcement for reporting and grant purposes. The monitoring of experimental use permits (Sect. 5) and emergency exemptions (Sect. 18) will involve inspecting users and distributors to ensure that the terms of the permit as well as the labeling are being adhered to. EPA, however, has the final responsibility for ensuring that the terms of an emergency exemption are complied with and cannot, by the nature of the exemption process, delegate that responsibility.

Section 23 of FIFRA authorizes EPA to cooperate with states in the enforcement of FIFRA in areas other than use. The Department agrees to accept the responsibility of conducting non-use related inspections as described below and to take corrective enforcement action.

Certified Commercial Applicator License and Records Inspections

These types of inspections are normally conducted at the certified commercial applicator's place of business. The purposes of these inspections are to determine if the applicator is properly certified and licensed, is maintaining the required records, is making application only in the uses for which he is certified, and to determine if his records show that his applications have been in compliance with all applicable laws and regulations.

Restricted-Use Pesticide Dealer Records Inspections

These types of inspections are conducted on-site at dealers who sell restricted-use pesticides. The purposes of these inspections are to determine if the dealers are properly licensed and are maintaining the required records, and to review the dealers' records to determine if restricted-use pesticides are being sold only to certified applicators or other properly authorized persons.

Producer Establishment Inspections

Producer establishment inspections are inspections of an establishment where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples. While conducting producer establishment inspections, product labels, containers and records should be examined for compliance with the Label Improvement Program and the Child-Resistant Packaging Program. Inspection of the books and records required by Section 8 of the FIFRA are also a part of Producer Establishment Inspections.

Marketplace Inspections

Marketplace inspections are inspections conducted at the retail or wholesale level for the purpose of determining product registration status, proper storage and display, any labeling violations, and any product decomposition. Marketplace inspections should be given a low level of priority unless product violation rates and compliance ratios show that such inspections will prevent significant harm.

The Department will also monitor the disposition of chemicals which have been cancelled or suspended. The Department will report to the South Dakota State Department of Natural Resources any suspected violations of the Chapter 34A-11 Hazardous Waste Management Act which comes to its attention regarding pesticide disposal practices.

The actions performed by the State under this subsection B will be reviewed on a semi-annual basis by EPA. Also, EPA will maintain an "oversite" program whereby EPA personnel will accompany individual inspectors on various types of inspections in an effort to better coordinate actual investigation procedures.

The South Dakota Department of Agriculture will notify the Chief, Pesticides Field Operations Section, EPA Region VIII, within one week of the discovery of any suspected violations of the FIFRA which do not fall within the State's delegation. The Chief, Pesticides Field Operations Section, will confirm the existence of FIFRA violations and will maintain liaison with the State on the disposition of the case.

EPA personnel may provide for the training of South Dakota inspectors in accordance with the EPA practices and procedures when requested by the State. Training will also be provided, upon request, for chemists regarding the handling and analysis of pesticide samples, and also for the legal staff of the Department regarding pesticides.

The Director of the Division of Regulatory Services for the State of South Dakota shall review the results of all chemical analyses performed under this Agreement, and shall review the quality and sufficiency of all other evidence gathered in the course of any of the inspectional or investigatory activities performed. When this review reveals evidence of a violation of any provision of the South Dakota Pesticides Statutes or of the FIFRA, the Director shall accumulate, organize, and document all substantial and relevant evidence thereof. Where EPA and the South Dakota Department of Agriculture determine that EPA shall be a party to an enforcement action based upon evidence collected, the South Dakota Department of Agriculture file shall be made available to the designated EPA Region VIII attorney.

C. Reports.

The South Dakota Department of Agriculture shall submit, within two weeks of the end of each quarter, written quarterly reports to the state program manager of EPA Region VIII. EPA Region VIII shall prepare and submit to the Department of Agriculture a written mid-year and end of year performance evaluation. Such review by EPA will specifically consider:

1. The number of inspections in each inspectional category;
2. The future performance of any overdue commitments;
3. The actual accomplishments made by the Department;
4. Those areas in which performance and cooperation by the Department or the EPA may be improved.

Additionally, EPA will provide a written response to the Department within thirty days to questions raised by the Department related to FIFRA.

The Department will inform the South Dakota Cooperative Extension Service of patterns of pesticide misuse, as necessary, in an effort to get such information into pesticide applicator training courses. The Department is encouraged to study the impacts of pesticides in the environment as those impacts relate to enforcement matters.

III. General Conditions

It is mutually agreed that each agency shall:

- A. Maintain a close working relationship and exchange information relative to the agencies' planned pesticide surveillance/enforcement activities;
- B. Coordinate investigations and enforcement actions involving violations of both the FIFRA and the South Dakota Pesticides Statutes and Regulations to avoid duplication of effort;
- C. Perform its inspectional, analytical and case preparation activities in a manner designed to assure sample integrity, chain of custody, the use of standard methods of analysis, the sufficiency and adequacy of the evidence, and the violator's right to administrative due process;
- D. Periodically meet with the other agency to evaluate the performance of each agency with regard to the procedural, planning or surveillance elements of this agreement.

Nothing in this Cooperative Enforcement Agreement modifies other existing agreements except as specified, nor does it preclude entering into separate agreements which set forth procedures for special programs which can be handled more efficiently and expeditiously by such special agreement.


Nothing in the Cooperative Enforcement Agreement is binding on the State of South Dakota if sufficient funds are not provided by EPA to allow the State to carry out the agreed upon functions. Also, provided that the Department is carrying out the agreed upon functions in a manner satisfactory to EPA, the latter will not perform similar functions in the State.

Nothing in this Cooperative Enforcement Agreement is intended to usurp the authority of EPA to commence enforcement actions for alleged violations of the FIFRA. Similarly, nothing in this Agreement is intended to usurp the authority of the State of South Dakota to commence enforcement actions for alleged violations of the South Dakota Pesticide Statutes.


This Cooperative Enforcement Agreement, when accepted by both parties, shall continue in effect unless modified by the mutual written consent of both parties or terminated by either party upon a thirty (30) day advance written notice to the other.

This agreement revises the previous agreement signed November 28, 1978.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

DATE 2-14-85 APPROVED 
John G. Welles
Regional Administrator,
U.S. Environmental Protection Agency

FOR THE SOUTH DAKOTA DEPARTMENT OF AGRICULTURE

DATE 1/14/85 APPROVED 
Marvis T. Hogen
Secretary of Agriculture,
State of South Dakota



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
1860 LINCOLN STREET
DENVER, COLORADO 80295-0599

FEB 20 1985

Ref: 8AW-TS

MEMORANDUM

TO: John Welles, Regional Administrator

SUBJECT: Pesticides Cooperative Enforcement Agreement Between EPA Region VIII
and South Dakota

Attached for your signature is a Pesticides Cooperative Enforcement Agreement between EPA Region VIII and the South Dakota Department of Agriculture.

This Agreement updates an Agreement signed by our two Agencies in November 1978.

A handwritten signature in dark ink, appearing to read "Irwin", is positioned above the typed name.

Irwin Dickstein, Director
Air and Toxics Division

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SECTION 26/27 REFERRALS

OCM Interviewer: _____

Region: 8

Regional source of information: Dallas Miller

- 1) As discussed on page 40 of the guidance, EPA in consultation with each State will identify, in writing, priority areas for formal referral to the State. What are the priority areas for formal referral for each State in the Region? (Please list information below for each state.)

State: South Dakota

D. Cooperate with EPA on all significant case complaints referred under Section 26 and 27 of FIFRA.

1. Those significant use complaints received by EPA, from sources other than the Department of Agriculture, which meet the conditions set forth in this document may become referrals under Section 26 and 27 of FIFRA.
2. The formal referral must fall under one or more of the following national priorities:
 - a. Drift from pesticide application;
 - b. Pesticide misuse by pest control operators during structural applications;
 - c. Disposal of pesticides and pesticide containers;
 - d. Pesticide use problems associated with major spray programs, i.e., gypsy moth, forest service (conifer release), and mosquito control;
 - e. Human exposure to pesticides before, during and after application;
 - f. Enforcement against illegal sale or use of suspended or cancelled pesticides;
 - g. Enforcement against pesticide misuse that could result in pesticide contamination of ground-water resources;
 - h. Potential harm to endangered species.
3. A formal referral must include at a minimum, the following information: Name of complainant, address, telephone number, date of complaint, name of individual receiving complaint, details of the complaint, why the referral is significant, and how it meets these conditions set forth in this Agreement. EPA must also provide the names of other parties it has contacted concerning the complaint.
4. Specific conditions which determine if a complaint is significant may include all or one of the following items:

- a. Human Health - Death or any pesticide illness resulting in medical treatment by a physician.
 - b. Endangered Species - one or more endangered species; death, illness or significant exposure.
 - c. Food and Water - Food or water, for immediate human consumption, is or is alleged to be or may become contaminated at or above established federal tolerance levels or other recognized standards.
 - d. Economic Loss - (crop or domestic livestock) over \$3,000 (estimate by complainant).
 - e. Illegal use of cancelled or suspended pesticide.
5. Complaints referred to the state by EPA which do not meet the above conditions are not formal referrals.

Transmittal of complaints from EPA to the state shall be accomplished in the following manner:

- a. Initial contact shall be with the Director of Regulatory Services, 773-3724, or if he is not available the following individuals may be contacted in the order presented:

Administrator: Office of Agronomy Services - 773-4432
 Pesticide Program Supervisor - 773-4432
 Ag Program Specialist, Case Preparation - 773-4432

- b. The EPA primary contact will be the Region VIII State Program Manager (303) 293-1743. The EPA secondary contact will be Chief of the Program Support Section, Toxic Substance Branch (303) 293-1730.
6. These referral conditions and guidelines will be received as part of the development of the FY90 SEA and all parts will be open to negotiations.
7. Regional EPA Office will track section 26-27 referrals, applicant will track tips and complaints not referred by EPA.
- E. EPA will cooperate with SDDA on all referred misuse cases, provide SDDA information concerning enforcement action to be taken and involved regulated industry or individuals.
 - F. To inform the extension certification/training group of misuse situations and enforcement actions. Strive for monthly updates.
 - G. Take appropriate enforcement action in response to misuse information received from groups or organizations in contact with such information. (i.e., Extension, Poison Control Centers, Diagnostic labs, DWNR, etc).